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Total Number of Pages in This Submission

23

Application Number

09/699,963

Filing Date

11 November 1999

First Named Inventor

Angela MASSON

Art Unit

3883

Examiner Name

Tuan C. To

Attorney Docket Number

MASSON-001-US

**ENCLOSURES**

(Check all that apply)



Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

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Incomplete ApplicationReply to Missing Parts  
under 37 CFR 1.52 or 1.53

Drawing(s)



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Appeal Communication to Board  
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Proprietary Information



Status Letter

Other Enclosure(s) (please identify  
below):

Remarks

Appeal Brief

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name

Maier &amp; Maier PLLC

Signature

Printed name

Timothy J. Maier

Date

9/4/07

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IN THE U.S. PATENT AND TRADEMARK OFFICE

Appellant: Angela MASSON  
Application No.: 09/699,963  
Art Unit No.: 3663  
Filed: November 5, 1999  
Examiner: Tuan C. To  
For: ELECTRONIC KIT BAG  
Attorney Docket No.: MASSON-001-US

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**BRIEF ON APPEAL ON BEHALF OF APPELLANT**

Honorable Commissioner of Patents  
Washington, D.C. 20231

August 31, 2007

Dear Sir:

In support of the Notice of Appeal filed June 22, 2007, appealing the Examiner's final rejection mailed April 19, 2007 of each of pending claims 68-73 of the present application which appear in the attached Appendix I, Appellant hereby provides the following remarks.

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SEP 04 2007

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

**I. REAL PARTY OF INTEREST**

The real party of interest herein is Angela Masson.

**II. RELATED APPEALS AND INTERFERENCES**

To the best of Applicant's knowledge, there are no other appeals or interferences which would directly affect or which would be directly affected or have a bearing on the Board's decision in this Appeal.

**III. STATUS OF THE CLAIMS**

Claims 68-73 are reproduced in the attached Appendix I and are the claims on Appeal. Each of these claims are currently pending in the application. Claims 20-47 and 60 have been withdrawn and claims 1-19, 48-59 and 61-67 have been cancelled during the prosecution of the application.

**IV. STATUS OF AMENDMENTS**

A Reply Under 37 C.F.R. 1.116 has not been filed in response to the final rejection of April 19, 2007. Thus, no Amendments After Final are under consideration at this time.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention is a method of providing and using a portable, computerized, electronic kit bag (EKB) consisting of standard and state-of-the-art computer parts and peripherals, interfaced for maximum utility. The EKB is used by an

U.S. Application No. 09/699,963  
 Attorney Docket No. MASSON-001-US

aviation professional and has a central operating program which assesses the relationships of input data through a three-dimensional logic based decision-making algorithms and has output solutions formatted to be utilized either directly by the end user, an intermediate user, by a user through an aircraft system, or directly from the device to an aircraft system or autopilot (paragraph 14, page 4 of the application).

The nature of input data and sources can be typical and/or operationally unusual. Input data which is loaded onto the EKB may include reservations, meteorological, dispatch (routing, diversion and alternate planning), load planning, scheduling, airplane operating parameters, aircraft instruments and related systems (engine, hydraulic, GPS, Inertial, radar, GPWS, collision avoidance, etc.), FAA crew rest and duty limits, union regulations and rules, charts/maps, log-books, airport analyses and any and all other links and data that may be made available to computer acquisition (paragraph 33, page 9 of the application).

Output solutions may include flight planning, en route decision making moderated by weather and operating factors, financial analyses of integrated choices, fuel computations, weight-and-balance, crew planning, passenger accommodation/satisfaction result prognostication, and statistics relating to associated elements of an on-time/safe flight/travel operation (paragraph 37, page 10 of the application).

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SEP 04 2007

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

A. The first rejection to be reviewed on appeal is of Claims 68-73 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;

B. The second rejection to be reviewed on appeal is of Claims 68-73 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention;

C. The third rejection to be reviewed on appeal is of Claims 68-73 under 35 U.S.C. 102 as being anticipated by U.S. Patent No. 4,642,775 to Cline et al.

**VII. ARGUMENTS**

**A. Rejection of Claims 68-73 Under 35 U.S.C. § 101**

The Examiner has rejected claims 68-73 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Appellant respectfully submits that the aforementioned claims are directed to statutory subject matter for reasons expressed hereafter.

Examiner states that "claim 68 defines an operating program embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory" (Office Action 4/19/07, page 3). The Examiner gives no further detail as to why claims 68-73 specifically fail to satisfy this statutory requirement.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

However, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural interrelationships between the computer program and the rest of the computer, which permit the computer program's functionality to be realized, and is thus statutory. In re Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035 (Fed. Cir. 1994). Claim 68 recites, "providing a transportable computer to be carried by said aviation professional to and from and within an aircraft and airport; programming said computer with linear and non-linear algorithms and operating programs," which explicitly complies with the above-cited statutory requirement that the computer readable medium, or a computer in this case, be encoded with a computer program.

Accordingly, for at least such reasons, Independent Claim 68 and all claims dependent thereon are directed to statutory subject matter in light of 35 U.S.C. § 101. Accordingly, reversal of the Examiner's rejections of claims 68-73 under 35 U.S.C. § 101 is earnestly solicited.

**B. Rejection of Claims 68-73 Under 35 U.S.C. 112, Second Paragraph**

The Examiner has rejected claims 68-73 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner suggests that the use of the term "capable of" in claim 68, "suggests or makes optional but does not require steps to be performed or does not limit the scope of a claim or claim limitation (MPEP 2106(II,C)). Accordingly, the metes and

U.S. Application No. 09/699,963  
 Attorney Docket No. MASSON-001-US

bounds of the claim cannot be ascertained by one having ordinary skill in the art."  
 (Office Action 4/19/07, page 3).

Applicant agrees that the use of "capable of" in claim 68 does not require the explicit performance of the steps following the "capable of" term recited in claim 68 paragraph (b), however, Applicant does believe Claim 68 limits the types of algorithms and operating programs to be programmed onto the computer. Claim 68 requires the step of "programming said computer with linear and non-linear algorithms and operating programs," then requires said programs to be capable of, not required to perform,

"processing flight information, manipulating flight related data in a non-linear algorithm thereby aiding in flight decision-making processes resulting in solutions to flight related mathematical computations and runway selections and aircraft operating parameters and procedures, calculating pilot fatigue limits and scheduling issues and fuel computations, providing data displays to said professionals."

Not all computer programs are capable of the same functionality and, therefore, Applicant believes the capabilities of a computer program can add significant and potentially patentable distinctions over prior art. These capabilities are also believed to be readily ascertainable by one having ordinary skill in the art.

Assuming, *arguendo*, that paragraph (b) of Claim 68 is simply intended use and does not further limit the scope of the claim, paragraphs (a) and (c) still set forth explicit steps that that must be performed, thus limiting the scope of independent claim 68 and subsequent dependent Claims 69-73.

Accordingly, for at least such reasons, Independent Claim 68 and all claims dependent thereon are definite and particularly point out and distinctly claim the subject matter which applicant regards as the invention, in accordance with 35 U.S.C. § 112,

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

second paragraph. Accordingly, reversal of the Examiner's rejections of claims 68-73 under 35 U.S.C. § 112, second paragraph is earnestly solicited.

**C. Rejection of Claims 68-73 Under 35 U.S.C. 102(b)**

The Examiner has rejected claims 68-73 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 4,642,775 to Cline et al. Appellant respectfully submits that the aforementioned claims are not anticipated by Cline et al. for reasons expressed hereafter.

Claim 68 paragraph (c) recites, "loading aircraft and flight related data into said computer and pertaining to a flight plan, weather information for said flight plan, aircraft crew scheduling, aircraft maintenance information, aircraft load weight and balance, and flight passenger concerns." Examiner cites Cline et al. (col. 5 lines 20-24 and col. 8 lines 1-13) as disclosing these limitations, "the pilot can perform the task of loading aircraft and flight related data into said computer and pertaining to a flight plan, weather information for said flight plan, aircraft crew scheduling, aircraft maintenance information, aircraft load weight and balance, and flight passenger concerns in said portable computer."

The "loading" of this specific flight related information is claimed as part of a method of providing an electronic flight bag to and for use by an aircraft aviation professional, as recited in Claim 68. The "loading" of these individual pieces of information is not mentioned in the alternative nor preceded by "intended use" or "capable of" language, within Claim 68.



U.S. Application No. 09/699,963  
 Attorney Docket No. MASSON-001-US

The method of providing an electronic flight bag to and for use by an aircraft cited in Claim 68 details programming a transportable computer with an operating system capable of in flight decision making processes. In order to make the most accurate and efficient in flight decisions, specific data must be loaded onto the computer. This data includes: weather information for the flight plan, aircraft crew scheduling, aircraft maintenance information, aircraft load weight and balance, and flight passenger concerns. Each of these pieces of information can change or alter an in flight decision. Therefore, methods of providing electronic flight bags which include computer programs capable of making in flight decisions that do not include all of these pieces of information are incomplete and substantially distinct from the method claimed, specifically in Claim 68 and in subsequent dependent claims 69-73.

Upon review of Cline et al., Applicant was **unable to find any mention** of aircraft crew scheduling, aircraft maintenance information or flight passenger concerns. Likewise, there is **no mention or suggestion** of loading these pieces of information onto a transportable computer anywhere in Cline et al. Therefore, Cline et al. fails to teach or suggest each and every feature recited in Claim 68 in accordance with the anticipation requirements under 35 U.S.C. 102(b).

Accordingly, for at least such reasons, Independent Claim 68 and all claims dependent thereon are patently distinct from Cline et al. Accordingly, reversal of the Examiner's rejections of each of claims 68-73 is earnestly solicited.

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SEP 04 2007

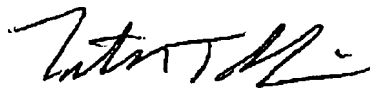
U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

**CONCLUSION**

Accordingly, in view of the above remarks and reasons explaining the patentable distinctness of the presently appealed claims over the prior art, Appellant requests that the Examiner's rejection be REVERSED.

Respectfully submitted,

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SEP 04 2007

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

**APPENDIX I**

**CLAIMS**

Claims 1-19 (canceled)

20. (withdrawn) A portable, computerized aircraft flight system which accesses, organizes, manages, and manipulates flight data and functions, resulting in output displayed and accessible by a user, comprising:

a portable device having,

hardware with a processor; memory; data input means, for permitting said user to input data; display means for displaying data to said user; data recording and storage means; and data output means for permitting said user to output data;

a self-powering element for electrically operating said device independent of a fixed power supply;

software, including an operating system and operating program;

a data source which provides flight data in an electronic format, said data source supplying said data in an input format compatible with said portable device input means;

data delivery for delivering said data to said portable device; and,

application software which manipulates and renders said source data, delivering the data in a format consistent with the functionality of the device.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

21. (withdrawn) The flight system of claim 20 wherein said software includes means of accessing said flight data and functions by means of an application program interface.
22. (withdrawn) The flight system of claim 20 wherein said software comprises means of organizing said data by means of a search engine function.
23. (withdrawn) The flight system of claim 20 further comprising a communications means whereby said portable device communicates with data sources remote from said device.
24. (withdrawn) The flight system of claim 20 further comprising a data communications means wherein the preferred embodiment is wireless.
25. (withdrawn) The flight system of claim 20 further comprising a data communications means wherein the preferred embodiment is wireless.
26. (withdrawn) The flight system of claim 20 wherein said data delivery means for delivering said data to said portable device is by means of the Internet.
27. (withdrawn) The flight system of claim 20 wherein the method of rendering said flight data and functions is by means of an HTML browser format.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

28. (withdrawn) The flight system of claim 20 wherein said device includes a flight planning component comprising;  
a flight planning applications software program;  
inputted flight data; and,  
a continuous data update capability.
29. (withdrawn) The flight system of claim 20 wherein said portable device further comprises an external power source connection capability.
30. (withdrawn) The flight system of claim 20 wherein said portable device further comprises data communications means for establishing data communication links between said portable device and disparate data sources.
31. (withdrawn) The flight system of claim 20 wherein said portable device further comprises a means of ascertaining position.
32. (withdrawn) The flight system of claim 20 wherein said portable device further comprises a means of terrain mapping.
33. (withdrawn) The flight system of claim 20 wherein said portable device further comprises means permitting the user to access and manipulate said data and programs by means of peripheral devices comprising;

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

peripheral ports;  
peripheral hardware; and,  
peripheral device drivers.

34. (withdrawn) The flight system of claim 20 wherein said portable device further comprises a means of attaching the device to an aircraft, comprising;  
a means of securing said device to the aircraft;  
a means of allowing the user to view said device's display  
while said device is attached to the aircraft; and  
a means of removing said device from said attachment device.
35. (withdrawn) The flight system of claim 20 wherein said portable device further comprises a means of attaching said computer and associated power supply to an aircraft, comprising;  
a means of securing said device and said power supply to the  
aircraft;  
a means of allowing the user to view said device's display  
while said device and said power supply are attached to  
the aircraft; and,  
a means of removing said device and power supply from said  
attachment device.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

36. (withdrawn) The flight system of claim 20 wherein the portable device further comprises a timing mechanism.
37. (withdrawn) The flight system of claim 20 wherein said programs specifically include application program interfaces and search engine routines as the means of relating and aggregating data.
38. (withdrawn) The flight system of claim 20 which includes construction characteristics resembling a tablet or other forms consistent with the intended use.
39. (withdrawn) The flight system of claim 20 wherein said portable device is attached to vehicles other than aircraft.
40. (withdrawn) A portable, computerized aircraft flight system which accesses, organizes, manages, and manipulates disparate data and functions, resulting in output accessible by a user, comprising:
  - a portable device having,
    - hardware with a processor; memory; data input means, for
    - permitting a user to input disparate data; display means for
    - displaying data to a user; data recording and storage means;
    - data output means for pertaining a user to output data;
  - a power source comprising one or more batteries and an external power

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

connection capability;  
software, including an operating system, and program,  
application software, and,  
a means of docking the device to the aircraft whereby said portable  
device becomes an operatively interconnected component of the  
aircraft.

41. (withdrawn) The flight system of claim 40 wherein said portable device includes a means of docking the device to the aircraft whereby said portable device becomes an operatively interconnected component of the aircraft, comprising;  
a hardware docking assembly on the portable device;  
a hardware docking assembly on the aircraft, whereby, when connected the device and aircraft may exchange data and respond to user respond to user input as an integrated unit; and,  
an interconnect whereby the device can optionally share the aircraft's power source.

42. (withdrawn) The flight system of claim 20 wherein said portable device includes a means of docking the device to the aircraft whereby said portable device becomes an operatively interconnected component of the aircraft, comprising;  
a hardware docking assembly on the portable device;  
a hardware docking assembly on the aircraft;  
a computer on the aircraft which sends and receives data,



U.S. Application No. 09/699,963  
 Attorney Docket No. MASSON-001-US

transmitting between it and said portable devices when docked,

comprising;

a communication means between said portable

device and said aircraft computer; and,

associated software.

43. (withdrawn) The flight system of claim 40 wherein said portable device includes a means of docking the device to the aircraft whereby said portable device becomes an operatively connected component of the aircraft, comprising;

a hardware docking assembly on the portable device;

a hardware docking assembly on the aircraft;

a computer on the aircraft which sends and receives data

transmitted between it and said portable device, comprising;

a communication means between said

portable device and said aircraft computer;

associated communications software; and,

a means of controlling moveable aircraft components, comprising;

software which sends commands to designated moveable

components; and,

the aircraft's electronically responsive flights control and

operating systems.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

44. (withdrawn) The flight system of claim 40 wherein said portable device receives performance and system data from the aircraft to which it is docked.
45. (withdrawn) The flight system of claim 40 wherein said portable device receives performance and system data from the aircraft to which it is docked, manipulates said data, and outputs revised data back to the aircraft thereby effecting changes in the aircraft's systems or controls by means of transferring said data electronically.
46. (withdrawn) The flight system of claim 40 wherein said portable device receives data from onboard aircraft computers by means of said docking system, manipulates said data, and similarly returns data to the aircraft for display on other aircraft computer systems or display devices.
47. (withdrawn) The flight system of claim 40 wherein the portable device is docked for use with transportation vehicles other than aircraft.

Claims 48-59 (canceled)

60. (withdrawn) The flight system of claim 20 wherein an electronic flight system is used to manipulate an aircraft by an on-board or remote user, comprising the following steps:
  - (a) electronically connecting the electronic flight system device to the

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

autopilot system;

- (b) inputting aircraft commands into the device;
- (c) instructing the device to use translation/API strategies and programs to reformat, adjust, stack and interface the commands into the executable language of the aircraft navigation and operating systems;
- (d) outputting commands into the aircraft's navigation and operating system through the device's autopilot interface;
- (e) instructing the aircraft computers and operating systems to respond to the input commands as they would to other normal, electronic autopilot command inputs;
- (f) outputting the results of the aircraft navigation, flight and operational systems back to said electronic device,
- (g) said outputs which may then be accessed and reviewed by the user for additional inputs,
- (h) thereby permitting an on-board or remote controller to manipulate a vehicle through said electronic device.

Claims 61-67 (cancelled)

68. (previously presented) A method of providing to and for use by an aircraft aviation professional or pilot a lightweight and easily manipulated electronic flight bag, comprising the steps of:

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

(a) providing a transportable laptop computer to be carried by said aviation professional to and from and within an aircraft and airport, in a carry bag;

(b) programming said laptop with linear and non-linear algorithms and operating programs capable of: processing flight information, manipulating flight related data in a non-linear algorithm thereby aiding in flight decision-making processes resulting in solutions to flight related mathematical computations and runway selections and aircraft operating parameters and procedures, calculating pilot fatigue limits and scheduling issues and fuel computations, providing data displays to said professionals; and

(c) loading aircraft and flight related data into the said laptop and pertaining to a flight plan, weather information for said flight plan, aircraft crew scheduling, aircraft maintenance information, aircraft load weight and balance, and flight passenger concerns.

69. (previously presented) The method of Claim 68 further comprising the step of loading into said laptop aircraft and aviation manuals for flight operating and emergency procedures, and charts for an off-line emergency airport.

70. (previously presented) The method of Claim 68 further including the step of providing with said kit bag an E6-B slide rule to solve some airspeed / ground speed calculations and eliminate some wind charts.

71. (previously presented) The method of Claim 68 further including the step of providing said laptop computer as a knee-top ergonomic style unit.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

72. (previously presented) The method of Claim 68 further including the step of providing said laptop computer with an interactive headgear interface device.

73. (previously presented) The method of Claim 68 further including the step of programming, and loading data into, said laptop computer on-line, and off-line through a modem, and via internet and intranet systems, and via other communication means.

U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

**APPENIDX II**

**EVIDENCE**

No copies of evidence are submitted in this appeal.

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U.S. Application No. 09/699,963  
Attorney Docket No. MASSON-001-US

**APPENDIX III**

**RELATED APPEALS AND INTERFERENCES**

To the best of Appellant's knowledge, there are no other appeals or interferences which will directly affect or be directly affected by, or have a bearing on, the Board's decision in this appeal.